IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.759 OF 1997

1. Balasaheb Gulab Ghule,
aged 24 years, Occ. Farmer,

2. Ramdas Khandu Warghade,
aged 28 years, Occ. Labourer,

3. Shrihari Khandu Warghade,
aged 37 years, Occ. Labourer

4. Gopichand Baburao Marghade,
aged 47 years, Occ. Agriculturist,

5. Kisan Sopan Shitkal, aged
31 years, Occ. Farmer,

6. Ramdas Hanumant Warghade,
aged 30 years, Occ. Agriculturist,

7. Sudam Sopan Shitkal,
aged 40 years, Occ. Farmer. .....Appellants.

V/s

The State of Maharashtra .....Respondent
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Mr. A.P. Mundargri with Mr. Prakash D. Naik for the appellant.

Mr. A.M. Shringarpure, APP for the State.
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**CORAM : V.G.PALSHIKAR & R.C.CHAVAN, JJ**

**DATED : 12th August, 2005**

**ORAL JUDGMENT : ( Per R.C.Chavan, J )**

1. Seven persons who were convicted by the learned Additional Sessions Judge, Pune of the offences punishable under sections 147, 148, 302 read with section 149 of the Penal Code and sentenced to suffer

imprisonment for six months, one year and for life and various amounts of fine have preferred this appeal, challenging their convictions and sentences.

2. Facts which led to prosecution of the appellants are as under:-

3. Appellants as well as the deceased Narsing and his family are residents of village Bakuri, Taluka Haveli, District - Pune. There are two groups of Shitkals and Warghades in the village. The appellants belong to Shitkal group and the victim belonged to Warghade group. A few days before the incident, elections to Grampanchayat had taken place at which Sarpach of Warghade group was defeated and wife of accused No.7 became Sarpanch. On 12/5/1995, both the parties had gone to attend the marriage of daughter of Kaluram Jadhav. There were some altercations between the parties on account of music in the marriage procession. Accused Nos. 5 and 6 who had participated in the altercations were pacified. After the marriage feast, when victim Narsing was returning to his house along with his brothers and others, near the house of one Kondiba Abnave, all the accused charged at the victim and complainant. They started pelting stones. Accused No.1 gave a blow by sword whereas accused No.2 stabbed Narsing in abdomen by

knife. Witnesses ran away. Police came to know of the incident and recorded First Information Report.

4. Narsing had died on the spot. After performing inquest, his body was sent to post-mortem examination. Police performed panchanama of spot, recorded statements of witnesses, arrested the accused persons, seized incriminating articles including knife and sword at the instance of accused No.1 - Balasaheb, sent the incriminating articles to Forensic Science Laboratory and, on completion of investigation charge-sheeted the accused. The learned Judicial Magistrate, First Class, Pune, committed the case to the Court of Sessions. The learned Additional Sessions Judge to whom the case was assigned, framed charge of offences punishable under sections 147, 148, 302 read with section 149 or 34 and 336 of the Penal Code against all the accused persons. All the accused pleaded not guilty and claimed to be tried.

5. Prosecution examined in all 7 witnesses in order to bring home the guilt of the accused. Upon consideration of evidence of these 7 witnesses, in light of defence of false implication due to political rivalry, the learned Additional Sessions Judge held the accused guilty of offences punishable under sections 147, 148, 302 read with section 149 of the

Indian Penal Code and proceeded to sentence them as aforementioned. Aggrieved thereby, this appeal has been filed.

6. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the State. There is no dispute that the victim Narsing met with his death on account of antemortem injuries, as observed in notes of post-mortem examination at Exhibit-28. The question is only about authorship of those injuries. In order to prove authorship of injuries, the prosecution relied on ocular testimony of P.W. 1 - Tirsingh Warghade, P.W. 4 - Shantaram Ramchandra Warghade and P.W. 5 - Dnyaneshwar Baban Warghade.

7. P.W. 1 - Tirsing is a real brother of the victim Narsing. He stated, among other things, that at the time of incident Baba Warghade, Anada, Dnyanshwar Baban Warghade, Dnyaneshwar Macchindra Wargahde and Shantaram Warghade were with him. Thus, he speaks of presence of both P.W. 4 - Shantaram Ramchandra Warghade and P.W. 5 - Dnyaneshwar Baban Warghade at the time of incident. He did not, however, state that there were any other persons present at the spot. with him.

8. P.W. 4 - Shantaram Ramchandra Warghade, however, stated that in addition to 7 accused persons, 7 to 10 other persons were also sitting near the house of Abnave.

9. While P.W. 1 - Tirsing stated that when accused Nos. 1 to 7 started pelting stones, all of them started running towards Harijan Vasti led by Narsing and followed by Tirsing, P.W. 4 - Shantaram gives an altogether different story. The evidence of Tirsing would suggest that when the accused Nos. 1 to 7 started pelting stones, they started running towards Harijan Vasti with Narsing in the lead. Narsing was caught by the accused and beaten with fists and kicks. Accused No.1 then gave a blow by sword on the head of Narsing and accused No.2 gave blows by knife in the abdomen of Narsing. Tirsing himself was frightened and ran towards his house and slept.

10. P.W. 4 - Shantaram states that when stone pelting started, Shantaram and others proceeded towards the accused. Victim Narsing was running towards the accused and was about 15 ft. away from others from Narsing's party. Accused No.5 caught hold of Narsing and accused Nos. 4, 5 and 6 gave kicks and fist blows and then accused No.1 hit Narsing by knife and accused No.2 gave a blow by sword. In course of

cross examination, this witness (P.W.4 - Shantaram) stated that stone had hit his right sheen causing a slight abrasion. He states that all of them ran towards the accused and accused then ran towards Harijan Vasti and then complainant's party chased the accused. He was categorical that P.W. 1 - Tirsing was not with them.

11. P.W. 5 Dnyaneshwar Baban Warghade is the third witness. He states that after stone pelting began, accused Ramdas Khandu gave a blow by sword on the head of Narsing. Accused Balu gave blows by knife. Thus, contrary to what P.W. 1 Tirsing stated, P.Ws. 4 - Shantaram and 5 - Dnyaneshwar Baban Warghade state that not accused No.1 - Balu @ Balasaheb, but accused No.2 Ramdas Khandu Warghade gave blows by sword and accused No.1 - Balu was using knife. This is a material contradiction. Also, the account of the incident given by P.W. 4 - Shantaram is indicative of the complainant's party attacking the accused.

12. While P.W. 1 - Tirsing stated in para 6 of his deposition that the night was dark, P.Ws. 4 - Shantaram and P.W. 5 - Dnyaneshwar stated that it was moonlit night. They seem to have seen whole incident in moonlight.

13. Apart from these contradictions, in the ocular account of these three witnesses, the witnesses give extremely incredible postscript to the incident. All of them state having peacefully gone to their houses and slept merrily oblivious of the fact that Narsing had been attacked. P.W. 1 - Tirsing stated that he went and slept in the house because he felt that Narsing also must have gone to his house and slept. P.W. 1 would so feel only if he had not seen the assault on Narsing. Otherwise, after seeing Narsing hit by sword and knife, he would not have felt that Narsing must have gone home and slept. P.W. 4 - Shantaram stated in his cross-examination that they had given chase to the accused, but since beating started, he states that they came back and went to their respective houses and that they did not state about the incident to any one out of fear. He states that they were not chased by the accused. His conduct rules out his having seen any assault on Narsing.

14. P.W. 5 - Dnyaneshwar Baban Warghade also stated that he did not inquire about Narsing in the night because he was afraid. He claims that he did not know whether Tirsing was present or not. There is one more interesting facet about testimony of P.W. 5 - Dnyaneshwar. He was present at the inquest panchanama conducted by P.I. Godse. He claimed to have told

P.I. Godse that he had seen the incident but Godse did not record his statement. His statement was recorded after a lapse of a few days, indicating possibility that he is a got up witness. It is indeed strange that the learned Additional Sessions Judge should have felt that this type of eye witness account was truthful and was sufficient to infer about complicity of the appellants. In our opinion, the entire account is unworthy of credit.

15. The prosecution has pressed in aid discovery of weapons at the instance of accused No.1 - Balu in presence of P.W. 6 - Vitthal, effected by P.W. 7 - P.I. Godse. About this evidence, the less said the better. Neither P.W. 6 - Vitthal nor P.W. 7 - P.I. Godse have stated about disclosure by accused No.1 and the resultant discovery so as to make account conform to requirement of section 27 of the Evidence Act. In view of this, the evidence of discovery of weapons in itself would not provide a link to connect the appellant to the crime.

16. In the result, we find that the prosecution evidence is thoroughly unreliable and should not have formed foundation for conviction of the appellant. We, therefore, allow the appeal, set aside the conviction of the appellant of the offence punishable

under sections 147, 148, 302 read with section 149 of the Penal Code and the resultant sentences imposed upon them. We direct that the bail bonds of the appellants shall stand cancelled and fine, if any, paid by them shall be refunded to them.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)